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No. 00-1781

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OAKLAND HOUSING AUTHORITY AND HAROLD DAVIS,
Petitioners,

v.

PEARLIE RUCKER, HERMAN WALKER, WILLIE LEE, AND BARBARA HILL,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF THE INTERNATIONAL CITY-COUNTY MANAGEMENT ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL GOVERNORS ASSOCIATION, NATIONAL LEAGUE OF CITIES, AND U.S. CONFERENCE OF MAYORS AS *AMICI CURIAE* SUPPORTING PETITIONERS

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INTEREST OF THE *AMICI CURIAE*

Amici, organizations whose members include state, county, and municipal officials throughout the United States, have a compelling interest in legal issues that affect state and local governments.[1] In cooperation with the federal government, *amici* and their members provide public housing for over three million low-income people.

While drug-related criminal activity has affected communities across the socio-economic spectrum, its impact on many public housing residents has been devastating. The incidence of drug-crime and violent crime is far higher in certain public housing projects than it is in other areas. *See* Terence Dunworth & Aaron Saiger, *Drugs and Crime in Public Housing: A Three-City Analysis* 34-37 (1994). As Congress found when it enacted 42 U.S.C. § 1437d(*l*)(6), "drug dealers are increasingly imposing a reign of terror on public . . . housing tenants." 42 U.S.C. § 11901(3).

Congress responded by enacting section 1437d(*l*)(6), which provides that "any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy." Notwithstanding the clear statutory text, which authorizes but does not require eviction, the court of appeals has construed § 1437d(*l*)(6) as requiring a housing authority to show in an eviction that a tenant either knew or had reason to know of drug-related activity engaged in by household members and guests. Because the court of appeals' holding is contrary to congressional intent and frus-

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[1] The parties have consented to the filing of this brief *amicus curiae*. Their letters of consent have been filed with the Clerk of the Court. Pursuant to Rule 37.3, *amici* state that this brief was not authored in whole or in part by counsel for a party, and no person or entity, other than the *amici*, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief.

trates efforts to protect public housing residents from the deleterious effects of drugs and drug-related violence, *amici* submit this brief to assist the Court in the resolution of this case.

SUMMARY OF ARGUMENT

A. Section 1437d(*l*)(6) and HUD's implementing regulations are a measured response to the serious problems resulting from drug-related criminal activity in and near many public housing projects. In related legislation, Congress specifically found that public housing projects "in many areas suffer[] from rampant drug-related crime" and that "drug dealers are increasingly imposing a reign of terror on" public housing residents. 42 U.S.C. § 11901(2) & (3). Both congressional hearings and studies conducted for HUD demonstrate the serious threat which drug-related criminal activity poses to the residents of many public housing communities. Drug-related criminal activity has also led to the deterioration of public housing facilities.

B. The court of appeals erred in holding that "Congress did not intend § 1437d(*l*)(6) to permit the eviction of innocent tenants." Pet. App. 32a. By its plain terms, section 1437d(*l*)(6) provides that "any drug-related criminal activity" committed by members of a tenant's household or a tenant's guests "shall be cause for termination of [the] tenancy." 42 U.S.C. § 1437d(*l*)(6). Congress limited the breadth of the term "any" by enumerating the category of persons whose drug-related criminal activity subjects a tenant's lease to termination. *See id.* Congress did not, however, further limit the scope of actionable "cause for termination" to drug-related activity of which a tenant either knows, or has reason to know.

The court of appeals rejected as unpersuasive the argument that Congress's inclusion of an "innocent owner" defense in the civil forfeiture statute while not including similar language in section 1437d(*l*)(6) demonstrates "that Congress

knows how to provide an innocent tenant defense when it wants to." Pet. App. 21a. Asserting that these different provisions "govern the same subject matter" and have the "same" purpose, *id.* at 20a, the court construed the statutes *in pari materia* and grafted the innocent owner defense of civil forfeiture law onto section 1437d(*l*)(6). This was error for several reasons.

First, section 1437d(*l*)(6) is clear on its face and the resort to the civil forfeiture statute thus does not further illuminate its meaning. Second, the civil forfeiture law and section 1437d(*l*)(6) serve fundamentally different purposes. The purpose of the civil forfeiture provision is to deprive drug dealers and traffickers of the economic profits of their crimes as well as the assets used in the commission of drug offenses. The provision is thus an adjunct to the coercive power of the federal criminal law.

In contrast, section 1437d(*l*)(6) establishes the terms of a residential lease which a tenant voluntarily agrees to. A public housing tenant, like private sector tenants, receives the right to occupy a residence in exchange for agreeing to pay rent and comply with the other obligations of the lease. Residential leases of all kinds typically hold a tenant responsible for conduct by their household members and guests which unreasonably disturbs other tenants, breaches the peace, or otherwise violates the lease's terms. A governmental landlord is entitled to impose similar obligations as a condition of occupancy as long as the lease's terms are clear.

C. Even if section 1437d(*l*)(6) is not clear, the court of appeals erred in failing to defer to HUD's reasonable interpretation of the statute. As HUD explained, the "contractual responsibility of the tenant for acts of unit occupants is a conventional incident of tenant responsibility under normal landlord-tenant law and practice. . . . The tenant should not be excused from contractual responsibility by arguing that tenant did not know, could not foresee, or could not control

behavior by other occupants of the unit." Public Housing Lease and Grievance Procedures, 56 Fed. Reg. 51560, 51567 (1991) (Final Rule). As HUD further reasoned, requiring a PHA to show knowledge would "undercut the tenant's motivation to prevent criminal activity by household members." *Id.* Equally important, "in practice it will be extremely difficult for the PHA to show that the tenant knew [of] . . . or failed to take all reasonable measures to prevent crime[] by a household member." *Id.*

While Congress subsequently amended section 1437d(*l*)(6) to expand its reach to include drug-related criminal activity occurring "on or off" the premises, it did not overturn HUD's 1991 interpretation. Moreover, in 1998 Congress enacted several provisions that make clear that an entire household can be denied admission to public housing when one of its members either uses drugs or has engaged in drug-related criminal activity. *See, e.g.*, 42 U.S.C. § 13661(b)(2). Congress has further amended section 1437d(*l*) to require that public housing leases "provide that any occupancy in violation of section 13661 . . . shall be cause for termination of tenancy[.]" 42 U.S.C. § 1437d(*l*)(7). These provisions demonstrate that HUD's interpretation of section 1437d(*l*)(6) is reasonable.

ARGUMENT

A PUBLIC HOUSING LEASE PREPARED PURSUANT TO 42 U.S.C. § 1437d(*l*)(6) IS VIOLATED BY ANY DRUG-RELATED CRIMINAL ACTIVITY OF A TENANT'S HOUSEHOLD MEMBER OR GUEST

Respondents violated the express terms of their public housing leases when their household members, guests, or caregivers were apprehended with illegal drugs on or near the Oakland Housing Authority's (OHA) grounds. OHA's termination of their leases and initiation of eviction

proceedings against respondents for their lease violations was fully authorized by federal housing law and HUD regulations and policy.

The court of appeals' holding that "Congress did not intend § 1437d(*l*)(6) to permit the eviction of innocent tenants," Pet. App. 32a, disregards the plain meaning of the statutory language and settled rules of statutory construction. Even if there were any material ambiguity in the statute, the court of appeals improperly substituted its own judgment for that of HUD, the expert agency charged with interpreting and administering the United States Housing Act. Contrary to the views of the court below, *see id.* at 30a & n. 10,[2] the Housing Act neither imposes on a public housing authority the burden of proving that a tenant knew or had reason to know of drug-related criminal activity by household members and guests, nor provides an affirmative "innocent tenant" defense to an eviction based on such activity. Moreover, a public housing authority is not required by federal law to evict and has discretion to consider "all of the circumstances of the case." 24 C.F.R. § 966.4(l)(5). The judgment of the court of appeals should therefore be reversed.

A. Section 1437d(*l*)(6) Was Necessitated By The Serious Problems Resulting From The High Level of Drug-Related Criminal Activity In Many Public Housing Communities

First enacted as part of the Anti-Drug Abuse Act of 1988, Pub.L. No. 100-690, § 5101, 102 Stat. 4300, section 1437d(*l*)(6) is a measured response to the serious problems resulting from drug-related criminal activity in and near many public housing communities. Indeed, in a related provision, Congress specifically found that "public housing

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[2] Citations to the Petition Appendix in this brief are to the appendix to the petition for certiorari filed by the Oakland Housing Authority in case number 00-1781.

projects in many areas suffer from rampant drug-related crime"; that "drug dealers are increasingly imposing a reign of terror on public housing tenants"; and that "the increase in drug-related crime not only leads to murders, muggings, and other forms of violence against tenants, but also to a deterioration of the physical environment that requires substantial government expenditures." *See id.* § 5122, 102 Stat. 4301 (codified at 42 U.S.C. § 11901(2)–(4)). Even the *en banc* court of appeals acknowledged, in the first sentence of its opinion, that "[m]any of our nation's poor live in public housing projects that, by many accounts, are little more than illegal drug markets and war zones." Pet. App. 8a.

While drug-related criminal activity affects many communities across the socio-economic spectrum, its impact on residents in many public housing communities is acute. As the Director of the Chicago Housing Authority (CHA) testified concerning conditions in public housing in Chicago in the late 1980's, "[t]he drug problem in public housing is very real and very frightening. In 1988, nearly 7,000 serious crimes were reported on CHA property—19 every day." *Drugs In Federally Assisted Housing: Hearing Before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking, Housing, and Urban Affairs*, 101st Cong. 108 (1989) (written statement of Vincent Lane). As the CHA Director further explained, "[t]he violent crime rate in many [Chicago] developments is double or even triple the city wide rate." *Id.* at 104.[3]

[3] According to a CHA memorandum, the violent crime rate at several housing projects exceeded 83 violent crimes per 1,000 residents. *See* Chicago Housing Authority, *Emergency Housing Inspections Program ("Operation Clean Sweep")* 2 (1989), reprinted in *Drugs In Federally Assisted Housing*, at 118 (Rockwell Gardens and Stateway Gardens projects had 83.9 and 89.9 violent crimes per 1,000 residents). This compared with a rate of 22.4 violent crimes per 1,000 people for the rest of Chicago and a national average of 6.2. *Id.*

This serious problem extends beyond Chicago to public housing in other large and medium-size cities. A study of drugs and crime in public housing in Los Angeles, Phoenix, and Washington, D.C., found a similar relationship. *See* Terence Dunworth & Aaron Saiger, *Drugs and Crime in Public Housing: A Three-City Analysis* 34-37 (1994) (hereinafter *Drugs in Public Housing*). From 1986 to 1989, the average annual rate of drug arrests in Los Angeles public housing was 58 per 1,000 residents. *Id.* at 34. This compared with a rate of 22 per 1,000 residents in nearby neighborhoods and 16 per 1,000 citywide. *Id.*[4]

In Phoenix, the average annual rate of drug arrests in public housing was 53 per 1,000 residents. *Id.* at 34. This compared with a rate of 30 per 1,000 residents in nearby neighborhoods and 5 per 1,000 citywide. *Id.*[5] In Washington, D.C., the average annual rate of drug arrests in public housing was 32 per 1,000 residents, which compared with a rate of 21 per 1,000 in nearby neighborhoods and 24 per 1,000 city-wide. *Id.* at 34.[6]

[4] In the same period, the rate of violent offenses in Los Angeles public housing was 67 per 1,000 residents. *Drugs in Public Housing*, at 37. This compared with a rate of 29 per 1,000 residents in nearby neighborhoods and 22 per 1,000 city-wide. *Id.*

[5] The rate of violent offenses in Phoenix public housing was 54 per 1,000 residents. *Drugs in Public Housing* at 37. This compared with a rate of 44 per 1,000 in nearby neighborhoods and 9 per 1,000 citywide. *Id.*

[6] In Washington, D.C., the rate of violent offenses in public housing was 41 per 1000 residents. *Drugs in Public Housing*, at 37. This compared with a rate of 23 per 1,000 in nearby neighborhoods and 19 per 1,000 citywide. *Id.* As this study further explained, the rates in all three cities "are much higher than those that most large urban communities experience. In 1989, for example, only one of the 58 cities with populations greater than 250,000 had a rate of violent offenses comparable to these housing development rates." *Id.* at 36. The study concluded that "[t]he vast majority of cities have rates that are much lower." *Id.*

A HUD-sponsored study of 15 municipalities completed in 1994 demonstrated that "drug dealers . . . targeted their activities to . . . public housing developments" as they found "customers among development residents and an atmosphere of less-than-stringent enforcement where outsiders [could] come to purchase drugs." Abt Associates Inc., *Public Housing Drug Elimination Program Resource Document: Case Studies Prepared for U.S. Department of Housing and Urban Development* 115 (1994) (hereinafter *Case Studies*). In Chicago, drug gangs took control and converted public housing into "open-air drug markets." *See Drugs In Federally Assisted Housing*, at 108. As a result, "[t]he sheer volume of crime, the physical configuration of the buildings, and the fear of retaliation," made it "almost impossible to provide normal police protection. Residents [were] literally trapped in their homes, held hostage by drug dealers who traffic their trade in the hallways and on the grounds of the developments." *Id.* In Madison, Wisconsin, "[d]rug dealers found security so lax and the possibility of being caught so nominal that they had actually attempted to sell drugs door-to-door." *Case Studies*, at 226.

In public housing communities where drug-related criminal activity is prevalent there are deleterious consequences beyond the physical harm and reign of terror imposed by drug dealers on the residents. In Chicago in the late 1980's, maintenance crews were frequently either unable or unwilling to enter buildings to conduct repairs because of the presence of drug gangs. *Drugs in Federally Assisted Housing*, at 119. The condition of Chicago public housing properties declined as "[i]n many buildings, millions of dollars of physical improvements [were] destroyed in a short period of time." *Case Studies* at 38. *See also id.* at 255 (noting that in the late 1980's Oakland Housing Authority vehicles were "shot at while they [were] responding to tenant calls").

Drug-related deterioration in living conditions also prompted families that improved their economic status to

hasten their departure from public housing. With fewer stable working families, some public housing communities, such as certain ones in Chicago and Oakland, became "islands of desperate poverty" with many families headed by "single mothers on welfare." *Drugs in Federally Assisted Housing*, at 107 (statement of CHA director).[7]

The demographic changes in these public housing communities fostered the drug trade. According to residents of Chicago's public housing in the early 1990's, "trading sex for drugs is a common practice and gangs tend to use apartments that are supposedly occupied by the households on the lease." *Case Studies*, at 38. The director of the Charlottesville, Va., Housing Authority explained that in that city, these "young welfare mothers [were] more likely than other residents to let dealers use their apartments for trafficking. This is a way for them to support their own habits or to obtain extra

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[7] As the CHA director testified in 1989,

> The typical head of a household [in Chicago] is now a single mother on welfare who has not finished high school and has experienced a lifetime of despair. Twenty-five years ago the median income of a family in public housing was about 40 percent of the nation's median; it is now about 15 percent. This is a very fragile base on which to build a strong community.

Drugs In Federally Assisted Housing, at 107. Similar conditions existed in Oakland in the late 1980's, when

> [a] large percentage of the OHA family population consist[ed] of single mothers with children. . . . According to staff, the heads of these families seem[ed] to be coming to OHA for housing at a younger and younger age, some of them directly from their mothers' own public housing units. Many ha[d] not lived on their own, and they [were] very vulnerable to drugs and to fear. . . . The estimated citywide median income for 1990 was $ 25,421; in contrast, the median/average income of OHA residents [was] $ 8,136.

Case Studies, at 254.

money." *Id.* at 5.[8] In the Sullivan Apartments in Springfield, Massachusetts, "[o]pen-air dealing was 'normal' for Sullivan residents, and many were afraid to be out during peak buying periods." *Id.* at 473. "One Sullivan resident, speaking of the violence in and around the development between 1988 and 1991, explained that children as young as 10 and 12 could be observed selling drugs then." *Id.*

Notwithstanding the growth of the drug trade in the late 1980's and the involvement of some residents in it, "the vast majority of public housing tenants . . . are law abiding residents . . . who are not involved in illegal drug activities." *Drugs In Federally Assisted Housing*, at 134 (statement of James Moran, then-Mayor of Alexandria, Va., July 20, 1989); *see also id.* at 110 (statement of CHA director) (in late 1980's "80 percent of [CHA] crime [was] committed by unauthorized or nonresidents"); *Case Studies*, at 83-84 ("vast majority of crimes occurring in [Dade County] public housing are committed by non-residents").

Mayor Moran explained that public housing residents in Alexandria strongly supported

> rid[ding] public housing of drug dealers *and users*. Public housing residents in Alexandria are tired of seeing their neighbors' lives destroyed by crack. They are tired of being jostled by drug dealers on the sidewalks in front of their homes. They are tired

[8] *See also Case Studies* at 143 (In Jersey City, N.J., "non-resident dealers will take over a unit leased to someone else or move in with single mothers. Site staff reported that in some instances drug dealers pay the official residents or furnish them with drugs in return for use of the unit."); *id.* at 177 (In Los Angeles, "[a] typical pattern . . . is that a single mother, in return for money which she needs to meet basic expenses, allows a live-in boyfriend to use the unit to deal drugs and to keep weapons. The mother may or may not herself be using drugs. The children living in the unit are thereby exposed even more intimately to the drug culture and its temptations.").

> of living in fear for their lives and the lives of their children.

Drugs in Federally Assisted Housing, at 133 (emphasis added).

The residents of Alexandria's public housing communities also strongly supported the city's policy of evicting households rather than simply the perpetrators of drug crimes. According to Mayor Moran, who conducted several meetings with public housing residents, "We debated the question of whether the entire household should be evicted for the actions of one family member who is involved in drugs. The response from public housing residents in Alexandria is yes. . . ." *Id.* at 134.

An additional dimension of the problem is that governments have limited funds to spend on public housing programs. According to *Case Studies*, in the early 1980's petitioner OHA had a waitlist of 22,000 households. *Case Studies*, at 254. Nationwide, it is estimated that only 25 percent of eligible families receive housing assistance. *See* G. Thomas Kingsley, *Federal Housing Assistance and Welfare Reform: Uncharted Territory* 2 (The Urban Institute, New Federalism—Issues and Options for States) Dec. 1997. *See also* The White House, Office of the Press Secretary, *Press Briefing By Secretary of Housing and Urban Development Henry Cisneros* 2 (Mar. 27, 1996) ("We have only money for about a quarter of the Americans who are eligible to live in some kind of assisted housing. That means we have three-quarters—again, as many persons as are in public housing—three times as many as are in public housing on waiting lists wanting to come in."); Br. *Am. Cur.* Housing and Development Law Institute *et al.* on petition for writ of certiorari, *HUD v. Rucker*, No. 00-1770, at 20 (noting "the reality that the retention of a family in public housing whose members commit crimes has the likely effect of excluding an equally needy family on the waiting list whose members are not criminals").

B. Section 1437d(*l*)(6) Does Not Require That A Tenant Have Knowledge In Order For A Public Housing Authority To Evict For Drug-Related Criminal Activity By A Member Of The Tenant's Household or Guest

When Congress enacted section 1437d(*l*)(6), it expressly intended that *any* drug-related criminal activity committed by the tenant, a member of the tenant's household, guest, or other person under the tenant's control was a serious violation of the lease terms that could result in termination of the tenant's right to occupy the premises. Contrary to the holding of the court of appeals, section 1437d(*l*)(6) does not require a public housing authority to show in an eviction proceeding that a tenant had knowledge, or should have known, that household members and guests were engaged in drug-related criminal activity. Nor is a public housing tenant entitled to raise an "innocent tenant" defense in an eviction proceeding based on section 1437d(*l*)(6).

1. Statutory construction begins, of course, with the "strong presumption that Congress expresses its intent through the language it chooses." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 n.12 (1987) (collecting cases). As amended, section 1437d(*l*) provides that:

> Each public housing agency shall utilize leases which . . . (6) provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or *any* drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy[.]

42 U.S.C. § 1437d(*l*)(6) (emphasis added).

By its plain terms, section 1437d(*l*)(6) states that "any drug-related criminal activity" committed by members of the tenant's household or a tenant's guests is "cause for termi-

nation of [the] tenancy." As the Court has previously observed, "the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting *Webster's Third New International Dictionary* 97 (1976)). *See also American Heritage Dictionary Of The English Language* 83 (3d ed. 1992) (defining "any" as "[o]ne, some, every, or all without specification"). Congress limited the breadth of the term "any" by enumerating the categories of persons whose drug-related criminal activity subjects a tenant's lease to termination. Congress did not, however, further limit the scope of actionable "cause for lease termination" to drug-related criminal activity of which a tenant either knows, or has reason to know. The absence of such further "language limiting the breadth of that word," *Gonzales*, 520 U.S. at 5, demonstrates that Congress clearly intended that "any drug-related criminal activity" by persons enumerated in the statute is grounds for terminating a lease, without regard to a tenant's knowledge.

The court of appeals rejected the obvious and natural meaning of section 1437d(*l*)(6) and instead held its text to be ambiguous. According to the court of appeals, "[t]he statutory provision does not expressly address the level of personal knowledge or fault that is required for eviction, or even make it clear who can be evicted. Although the statute permits 'termination of tenancy,' it does not answer the question of *whose* tenancy." Pet. App. 16a (quoting 42 U.S.C. § 1437d(*l*)(6)). In the court's view, the statute leaves unanswered the question of whether "[i]n situations with multiple tenants, does the statute authorize eviction of the offending party only, or all persons on the lease?" *Id.*

Contrary to the views of the court below, the statutory text, interpreted in light of basic principles of landlord-tenant law, answers each of these questions. First, as to the level of personal knowledge or fault required for eviction, the court's opinion reflects a fundamental misunderstanding of the nature

of the subject matter. HUD regulations expressly require that a "judicial eviction procedure" be used in every case in which a PHA seeks to terminate a lease. 24 C.F.R. § 966.4(l)(3)(v)(B). A judicial eviction proceeding is neither a criminal action nor a tort suit. Section 1437d(*l*)(6) does not address knowledge or fault because these issues are ordinarily irrelevant in adjudicating landlord-tenant disputes. Rather, in such disputes the issue is whether the parties have complied with or breached their respective obligations under the lease agreement. Where the facts alleged in the complaint establish the landlord's right to immediate possession, "the only issue in an unlawful detainer action is the truth or falsity of the facts alleged in the complaint." 49 Am. Jur. 2d *Landlord And Tenant* § 1006, at 785 (1995).

Moreover, the statutory text clearly does address who can be evicted "in situations with multiple tenants." Pet. App. 16a. Where, for example, two adults with capacity to contract enter into a lease and undertake the obligation to pay rent and comply with the lease's covenants, the landlord nonetheless conveys only one estate and only one tenancy is created. As one authority explains, the "[l]iability of colessees is presumed to be joint, not several." 1 Milton R. Friedman, *Friedman On Leases* § 2.1, at 16 n.4 (4th ed. 1997). While landlords typically make the liability of colessees joint and several, both parties are jointly liable for a breach of the lease's terms. *See, e.g.*, New York City Housing Authority Resident Lease Agreement ¶ 27 ("If more than one person joins in the execution of this agreement as Tenant, the covenants and agreements contained herein shall be deemed to be joint and several obligations, as though the applicable words were written in the plural.") (available at http://www.nyc.gov/html/nycha/pdf/federaldraft.pdf). Thus, if the breach of a lease's covenants is cause for the "termination of tenancy," then the tenants as well as those who occupy the premises under their estate are subject to eviction.

2. The court of appeals rejected HUD's contention that Congress's inclusion of an "innocent owner" defense in the civil forfeiture statute, *see* 18 U.S.C. § 983(d),[9] while not including similar language in section 1437d(*l*)(6), demonstrates "that Congress knows how to provide an innocent tenant defense when it wants to." Pet. App. 21a. *See* U.S. Pet., *HUD v. Rucker*, No. 00-1770, at 25 ("Congress's determination to include an express innocent owner defense to civil forfeiture underscores the significance of Congress's failure to include any such defense or exception in the lease clause mandated by Section 1437d(*l*)(6).").

The court of appeals, while "agree[ing] that the innocent tenant defense [in the civil forfeiture statute] was more clear," nonetheless concluded that the lack of such language "is not to say [that Congress] did not do so at all." Pet. App. 21a. The court made the extraordinary suggestion that the contrast in language between the two provisions only establishes that "Congress could have drafted the defense more explicitly in § 1437d(*l*)(6)." *Id.* In fact, the court's grafting of the innocent owner defense of federal civil forfeiture law onto section 1437d(*l*)(6) is plainly untenable.

Federal civil forfeiture law has recognized various "innocent owner" defenses since well before the enactment of section 1437d(*l*)(6) and its predecessor. The Comprehensive Drug Abuse Prevention and Control Act of 1970 recognized several forms of the defense with respect to conveyances. *See* Pub. L. No. 91-513, § 511(4), 84 Stat. 1437, 1485. The Psychotropic Substances Abuse Act of 1978, which added "moneys, negotiable instruments and securities" to the category of property which is subject forfeiture when used in violation of the drug laws, further provided that "no property shall be forfeited . . . to the extent of the interest of an owner, by reason of any act or omission established by that owner to

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[9] *See also* former 21 U.S.C. § 881(a)(7) (since amended by Civil Forfeiture Reform Act of 2000, § 2(c)(2), 114 Stat. 210).

have been committed or omitted without the knowledge or consent of that owner." Pub. L. No. 95-633, § 301, 92 Stat. 3768, 3777. Likewise, the Comprehensive Crime Control Act of 1984, which added real property to the list of forfeitable property, included the same innocent owner clause. *See* Pub. L. No. 98-473, § 306, 98 Stat. 1837, 2050; *see also* Civil Asset Forfeiture Reform Act of 2000, § 2, 114 Stat. 202, 206-07 (codified at 18 U.S.C. § 983(d)).

In contrast, section 1437d(*l*)(6) does not contain a single word, let alone a phrase or phrases, of similar import. When Congress, in the Anti-Drug Abuse Act of 1988, amended section 511(a)(7) of the Controlled Substances Act (which contained an innocent owner defense) to include "any leasehold interest," it had an opportunity to review the language it had repeatedly used to create an innocent owner defense. *See* Pub. L. No. 100-690, § 5105, 102 Stat. 4301. Congress should not be presumed to have been so inattentive to such an important detail. *Cf. Bates v. United States*, 522 U.S. 23, 29-30 (1997) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (citations and internal quotations omitted).

Asserting that section 1437d(*l*)(6) and 21 U.S.C. § 881(a)(7) "govern the same subject matter" and that "the purpose of both is the same," *see* Pet. App. 20a, the court of appeals construed the statutes *in pari materia*. This was error for several reasons.

First, as explained above, section 1437d(*l*)(6) is not ambiguous. "[W]here the act is clear upon its face, and when standing alone it is fairly susceptible of but one construction, that construction must be given to it." *Hamilton v. Rathbone*,

175 U.S. 414, 419 (1899).[10] The court of appeals' resort to the "innocent owner" defense explicitly set forth in the civil forfeiture laws to "illuminate[] . . . the language" of section 1437d(*l*)(6) violates the fundamental rule of construction "that prior acts may be resorted to, *to solve*, but not to *create*, an ambiguity." *Hamilton*, 175 U.S. at 421(emphasis added).

Second, section 1437d(*l*)(6) and the civil forfeiture statute do not "govern the same subject matter" nor have the "same purpose." Pet. App. 20a. Rather, federal forfeiture law and section 1437d(*l*)(6) serve fundamentally different purposes. The purpose of the civil forfeiture provision is to deprive drug dealers and traffickers of the economic profits of their crimes as well as the assets used in the commission of drug offenses. *See* S. Rep. No. 98-225, 191, 194-96, *reprinted in* 1984 U.S.C.C.A.N. 3182, at 3374, 3377-79. The civil forfeiture provision is thus an adjunct to the coercive power of the federal criminal law. *See id.* at 195, 1984 U.S.C.C.A.N. at 3378 ("the prospect of the forfeiture of the property would have been a powerful deterrent" to commission of drug crimes).

In contrast, section 1437d(*l*)(6) establishes one of the terms of a residential lease, which is a contractual arrangement. A public housing tenant, like other tenants, receives the right to

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[10] Because section 1437d(*l*)(6) is clear, there was likewise no reason for the court of appeals to rely on legislative history. *See* Pet. App. 22a-24a. The court below further compounded its error by relying on a paragraph from a 1990 Senate Report, which accompanied S. 566. *See id.* at 23a (quoting S. Rep. No. 101-316, at 179 (1990), *reprinted in* 1990 U.S.C.C.A.N. 5763, 5941). The paragraph quoted by the court discusses a proposed Senate amendment to former section d(*l*)(5). This provision, however, was not enacted into law. *Compare* 136 Cong. Rec. 16012 (1990) (reprinting S. 566, § 714(a)), *with* Cranston-Gonzalez National Affordable Housing Act, § 504, Pub. L. No. 101-625, 104 Stat. 4079, 4185 (1990). The quoted report thus provides no support for the court of appeals' assertion that "Congress specifically reject[ed] the notion that the PHA's discretion is so broad that it extends to the eviction of innocent tenants." Pet. App. 24a.

occupy a residence in exchange for agreeing to pay rent and comply with the other obligations of the lease. *See Minneapolis Public Housing Authority v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999) ("A lease is a form of contract. Unambiguous contract language must be given its plain and ordinary meaning."). Residential leases typically require that a tenant ensure that household members and guests refrain from engaging in conduct that unreasonably disturbs other tenants or breaches the peace. *See* Pet. App. 51a-52a (Sneed, J., dissenting) ("a provision permitting the eviction of unknowing tenants because of the wrongdoing of their household members or guests is a common and enforceable provision in leases between private owners of property and their tenants") (citations omitted). A governmental landlord is entitled to impose similar obligations as a condition of occupancy so long as the lease terms are clear.[11]

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[11] The court of appeals also asserted that section 1437d(*l*)(6) should be construed to require proof of tenant knowledge because "HUD's interpretation . . . would raise serious due process questions," in that "[p]enalizing conduct that involves no intentional wrongdoing can run afoul of the Due Process Clause." Pet. App. 26a. The court's invocation of the constitutional avoidance rule is plainly erroneous as the doctrine comes into play "only 'where a statute is susceptible of two constructions.' " *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 212 (1998) (quoting *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909)). As explained above, the statutory language is clear.

The court's assertion that evicting a tenant for unknowing violations of section 1437d(*l*)(6) "raise[s] serious due process questions," Pet. App. 28a, is refuted by the longstanding and accepted use of strict liability in "regulatory" and "public welfare offenses." *See generally Morissette v. United States*, 342 U.S. 246, 252-60 (1952); *United States v. Balint*, 258 U.S. 250, 252-54 (1922); *see also Shevlin-Carpenter Co. v. Minnesota*, 218 U.S. 57, 67-70 (1910). In any event, when a housing authority terminates a tenant's lease for violating section 1437d(*l*)(6) it is not enforcing a criminal statute but the terms of a residential lease.

3. Contrary to the view of the court below that "[i]t makes little sense to provide protections for the innocent tenant from the federal government but not from local housing authorities," *id.* at 20a, there are several plausible reasons for why Congress would do so. As explained above, drug-related criminal activity devastated many public housing communities. Imposing strict liability on public housing tenants is a reasonable and effective measure to protect law-abiding residents. *See* Br. *Am. Cur.* Housing and Development Law Institute on petition for writ of certiorari, *HUD v. Rucker*, No. 00-1170, at 19 ("Judicial focus. . . only upon the perceived hardship to individual defendants. . . ignores the disastrous effect that drug-related and serious violent criminal behavior has upon other public housing residents.").

First, strict liability creates a strong incentive for a tenant to take an active interest in the behavior of household members and guests. Moreover, those public housing tenants who benefit from the drug-dealing activity of a family member or guest will not be able to turn a blind eye to such activity. It is unrealistic to suggest, as did the court of appeals, that authorizing a housing authority to evict where it can show that a tenant "should have known" of drug-related activity will adequately address this problem. *See* Pet. App. 30a. In addition, "[i]n most cases, a tenant threatened with eviction is likely to deny any knowledge of or ability to control drug-related criminal activity." U.S. Pet., *HUD v. Rucker*, No. 00-1770, at 18. Furthermore, the culture of violence and intimidation in many public housing communities makes it unlikely that other residents will testify in court.

Second, drug dealing is an economic activity that responds to market forces. *See* Gerald Godshaw *et al.*, *Anti-Drug Law Enforcement Efforts And Their Impact* 133-35 (U.S. Customs Service 1987). The drug trade would not have flourished in public housing without a corresponding increase in demand among the residents for illegal drugs. As a matter of basic

economics, it is rational to conclude that reducing the demand for drugs in public housing will render drug-dealing less profitable and that as drug-dealing becomes less profitable, its level in public housing will decrease. Terminating the tenancies of those households whose members or guests use drugs will—without regard to a tenant's level of knowledge or fault—reduce the demand for drugs in public housing. Moreover, it is reasonable to conclude that as the demand for drugs declines in public housing, not only will there be less drug-crime but there will also be fewer drug-related incidents of violent criminal activity. *See* Pet. App. 18a. [12]

Congress authorized strict liability recognizing that it may be a necessary measure to protect the safety and well-being of public housing residents.[13] The court of appeals exceeded its authority when it second-guessed Congress's decision to provide PHAs with this authority. Its judgment should accordingly be reversed.

C. HUD's Interpretation Of Section 1437d(*l*)(6) Is Permissible And Is Entitled To Deference

Even if the court of appeals correctly concluded that "[s]ection 1437d(*l*)(6) is not a picture of clarity and may be subject to varying interpretations," Pet. App. 22a, the court

[12] The court of appeals also reasoned that construing subsection 6 to allow evictions of innocent tenants "would require PHAs to include an unreasonable term in their leases and permit eviction without good cause" in violation of sub-paragraphs d(*l*)(2) and d(*l*)(5). Pet. App. 18a. The general language of these provisions, however, cannot displace Congress's specific determination that "any drug-related criminal activity . . . engaged in by . . . any member of the tenant's household, or any guest . . . shall be cause for termination of tenancy." 42 U.S.C. § 1437d(*l*)(6). *See Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991) ("A specific provision controls over one of more general application.").

[13] As noted above, section 1437d(*l*)(6) authorizes, but does not require, PHA's to evict for drug-related criminal activity. *See* 24 C.F.R. § 966.4(l)(5)(i).

exceeded its authority when it failed to defer to HUD's interpretation of the statute. HUD's interpretation that a housing authority can terminate a tenancy for a violation of section 1437d(*l*)(6) without regard to whether the tenant knew or had reason to know of drug-related criminal activity by a household member or guest is both a permissible and reasonable interpretation of the statute. It is therefore entitled to deference. *See Chevron, U.S.A., Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 845 (1984).

Since 1991, HUD has interpreted section 1437d(*l*)(6) as authorizing a housing authority to terminate a lease for drug-related criminal activity engaged in by household members and guests without regard to the tenant's knowledge of the activity. As HUD then explained, the "contractual responsibility of the tenant for acts of unit occupants is a conventional incident of tenant responsibility under normal landlord-tenant law and practice . . . . The tenant should not be excused from contractual responsibility by arguing that tenant did not know, could not foresee, or could not control behavior by other occupants of the unit." Public Housing Lease and Grievance Procedures, 56 Fed. Reg. 51560, 51567 (1991) (Final Rule).[14] HUD's interpretation of section 1437d(*l*)(6) is a reasonable one.

Moreover, in 1996 Congress amended section 1437d(*l*)(6) by expanding the geographic scope of drug-related criminal activity from that occurring "on or near such premises" to that occurring "on or off such premises." Housing Opportunity

[14] HUD provided three additional reasons for rejecting a knowledge element or defense. First, requiring a PHA to show knowledge would "undercut the tenant's motivation to prevent criminal activity by household members." 56 Fed. Reg. at 51567. Second, "in practice it will be extremely difficult for the PHA to show that the tenant knew, could have foreseen, could have prevented, or failed to take all reasonable measures to prevent crime by a household member." *Id.* "Finally, a family which does not or cannot control drug crime . . . is a threat to other residents and the project." *Id.*

Program Extension Act of 1996, Pub. L. No. 104-120, § 9(a)(2), 110 Stat. 834, 836. The amendment thus increased the geographic scope of liability of innocent tenants for the drug-related criminality of their household members and guests. Congress did not, however, overturn HUD's 1991 interpretation. *Cf. United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 137 (1985) ("a refusal by Congress to overrule an agency's construction of legislation is at least some evidence of the reasonableness of that construction").

In 1998 Congress enacted several provisions which further demonstrate that HUD's interpretation of § 1437d(*l*)(6) is reasonable. *See* Veterans Affairs And HUD Appropriations Act, 1999, Pub. L. No. 105-276, §§ 575-77, 112 Stat. 2461, 2634-2641 (1998). Section 576 of Pub. L. No. 105-276 specifically requires a housing authority to "establish standards that prohibit admission to the program or admission to federally assisted housing for *any household with a member* . . . who the public housing agency . . . determines is illegally using a controlled substance[.]" 42 U.S.C. § 13661(b)(1) & (A) (emphasis added). Moreover, "if the public housing agency . . . determines that an applicant *or any member* of the applicant's household is or was, during a reasonable time preceding the date when the applicant household would otherwise be selected for admission, engaged in any drug-related or violent criminal activity . . . the public housing agency . . . may . . . deny such applicant admission to the program or to federally assisted housing[.]" *Id.* § 13661(c) & (1) (emphasis added).

While section 576 sets drug-related tenant screening standards, section 577 provides an additional ground for terminating a lease. It directs that "a public housing agency . . . shall establish standards or lease provisions for continued assistance or occupancy in federally assisted housing that allow the agency . . . to terminate the tenancy or assistance for *any household with a member* . . . who the public housing

agency . . . determines is illegally using a controlled substance[.] 42 U.S.C. § 13662(a) & (1) (emphasis added). Finally, in section 575, Congress amended section 1437d(*l*) to require that public housing leases further "provide that any occupancy in violation of section 13661 . . . or the furnishing of any false or misleading information pursuant to section 13662 . . . shall be cause for termination of tenancy." 42 U.S.C. § 1437d(*l*)(7).

These statutes manifest Congress's determination to rid public housing of both drug users and drug dealers. Section 576 makes plain that an entire household can be denied admission to public housing when one of its members either uses drugs or has engaged in drug-related criminal activity. 42 U.S.C. § 13661(b)(2) & (c). And section 577 makes clear that the tenancy of an entire household can be terminated because a household member "is illegally using a controlled substance." *Id.* § 13662(a) & (1).

While a public housing agency is authorized to consider evidence of rehabilitation in making both the initial screening decision and a termination decision, neither statute creates a categorical exception for innocent tenants. *See, e.g.*, 42 U.S.C. § 13662(b) ("[i]n determining whether . . . to terminate tenancy or assistance to any household based on a pattern of illegal use . . . by a household member, a public housing agency . . . may consider whether such household member . . . (3) is participating in a supervised drug . . . rehabilitation program . . . and is no longer engaging in the illegal use of a controlled substance"). *See also id.* § 13661(b)(2). With Congress having expressly stated that a household member's drug-related criminal activities are grounds for both denying admission and evicting the entire household, a PHA's authority to evict should not be judicially limited to those instances where it can show that a tenant knew that household members or guests engaged in drug-related criminal activity. As HUD explained, because a

tenant's strict liability for the conduct of household members and guests is a normal incident of tenancy, construing section 1437d(*l*)(6) as authorizing evictions in such situations is both reasonable and necessary. In any event, there is no reason to believe that Congress intended otherwise.[15]

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[15] The court of appeals' assertion that HUD's interpretation of the statute would lead to absurd results is misplaced. This canon does not apply here because where Congress's "intention is plain it is the duty of the court to expound the statute as it stands." *Folsom v. United States*, 160 U.S. 121, 127 (1895).

Moreover, the court's hypotheticals do not establish that application of HUD's interpretation would lead to absurd results. With respect to the court's hypothetical of a "tenant's child . . . visiting friends on the other side of the country . . . caught smoking marijuana," Pet. App. 25a, section 13662 specifically authorizes the termination. 42 U.S.C. § 13662(a). It is also reasonable to conclude that such a person has a substance abuse problem and will engage in similar conduct on public housing grounds. Congressional policy, however, is not simply all stick and no carrot. Section 13662(b)(3) authorizes a housing agency to consider in making a termination decision whether a substance abuser "is participating in a supervised drug . . . rehabilitation program . . . and is no longer engaging in the illegal use of a controlled substance."

The court's further hypothetical suggesting that evicting a person "convicted of a drug crime years earlier" would be absurd, Pet. App. 25a, is just another manifestation of the court's disapproval of federal policy. It is for Congress and HUD, and not the courts, to determine under what circumstances a convicted drug dealer should regain eligibility to live in taxpayer subsidized housing. Indeed, some drug offenders may have committed offenses so outrageous as to warrant being permanently barred from public housing programs. *Cf.* 24 C.F.R. § 960.204(a)(3) (barring admission "if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing").

In any event, Congress has specifically authorized a public housing agency to deny admission to the households of persons who have "engaged in any drug-related or violent criminal activity," if the activity occurred within "a reasonable time preceding the date when the applicant household would otherwise be selected for admission." 42 U.S.C. § 13661(c) & (1). The housing authority is likewise authorized to

CONCLUSION

The judgment of the court of appeals should be reversed.

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"require the applicant, as a condition of admission . . . to submit . . . evidence sufficient . . . to ensure that the individual or individuals in the applicant's household who engaged in criminal activity for which denial was made . . . have not engaged in any criminal activity during such reasonable period." *Id.* § 13661(c)(2). Moreover, section 1437d(*l*)(7) requires that a public housing lease "provide that any occupancy in violation of section 13661 . . . shall be cause for termination of tenancy[.]" *Id.* § 1437d(*l*)(7). Finally, the new HUD regulations state that in making a termination decision, the housing authority "may consider all of the circumstances relevant to a particular . . . eviction case." 24 C.F.R. § 5.852(a).